

comments

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Comments on UT-NV draft agreement

1. Sections 2.8 and 2.9 should be either deleted or changed to reflect the doctrine of prior appropriation that is the foundation of both states water law. In the draft SNWA's priority date of October 1989 is strictly expressed as senior to any that came after. During the public meeting in Baker when questioned about SNWA's priority date members of the negotiating committee stated several times "First in time. First in right." Confirming that under the doctrine of prior appropriation SNWA's permits would be treated as senior rights to those with later priority dates. In section 2.8 the last sentence reads " Such appropriations necessarily impact the existing hydrologic system and captures discharge available to phreatophytes, streams, and natural lakes.

Some amount of the water used by phreatophytes is on private land in sub-irrigated meadows. While this water may not have been diverted by humans it has been appropriated and put to the beneficial uses listed in the draft agreement. The streams and natural lakes referred to in section 2.8 have been appropriated by humans for beneficial uses prior to SNWA's applications in most cases by more than a century. The agreement should clearly state that these rights are Senior water rights to SNWA's permits.

Section 2.9 should state that much phreatophytes use occurs in sub-irrigated meadows and that these rights will be recognized as senior water rights that will be protected as they were in the NV State Engineers Ruling on SNWA's Spring Valley applications Where four of the applications were denied because of their proximity to meadow springs and sub-irrigated meadow. It was deemed likely that they would cause adverse impact to senior water rights.

Sections 2.8 and 2.9 should be deleted or changed to clear up the apparent disparity between the draft agreement's treatment of SNWA's priority date verses how senior water rights will be treated.

2. The draft agreement should be broadened to include any other entities that may develop water

for interbasin transfer. It should not be limited to SNWA permits. The wording in the Lincoln County Lands act to an agreement before inter basin transfers, not just SNWA transfers.

3. The mitigation fund is very small compared to the likely cost in the long term. Owens valley mitigation costs are near a billion dollars.

4. Section 6 . Identification and Mitigation of Adverse Impacts to existing permitted uses.

In the event of an Adverse impact of an Existing permitted use, the burden of proof should be on SNWA to prove that their pumping was not the cause.

5. The 132,000 afy yield number is not realistic. The data was gathered in 2005-2006. Snowpack in 2005 was almost 300% of normal. The only years with precipitation and runoff in the Snake valley record are 1952 and 1983-84. Using data from a 30-50 year flood event is unlikely to give realistic estimates.

The transpiration data from greasewoods would not be representative of the average. The greasewood were almost completely green in 2005-06. They barely turned green at all in the previous 6 years. It's my understanding that this measurement can change the discharge by tens of thousand of acre-feet. The agreement should better reflect the uncertainty of the BARCASS numbers.

6. The agreement should take into consideration the inflow from Spring Valley that may have already been permitted in Spring valley as it did the outflow to Fish springs as required by the the wording in the Lincoln County Lands act that calls for an agreement on the "inter basin flow system" .

Thank you

Craig Baker , Snake Valley resident